IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7947 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUSAI GOSWAMI CHANDRAGAR SHANKARGAR

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MS MANISHA LAVKUMAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/06/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Grievance has been made by petitioner in this special civil application against the action of respondents to demolish his shop. It is the case of petitioner that the

land on which shop has been constructed is given by the municipality concerned to him. However, it is the case of respondents that it is the public road on which this shop was constructed and that too without any permission of municipality and as it is creating obstruction on the road, it has been demolished. However, the respondents have admitted that the land in dispute on which this construction of shop has been made was given by municipality to the petitioner.

#. This court, on 30.11.88, admitted this writ petition and interim relief in terms of para-6(b) of the special civil application has been granted. Para-6(b) of the special civil application reads as under:

(b) Pending the hearing and final disposal of this petition, the respondents, their servants, agents and subordinates be by an order of interim injunction, restrained from stopping the petitioner from making the shop in workable condition and doing business in the same.

So after filing this writ petition, the shop has been reconstructed by the petitioner. On this fact there is no dispute between learned counsel for the parties. As now this shop has been reconstructed and the respondents admit that the land has been given to the petitioner by municipality, it is a case where before the respondents, particularly, the Collector of the District concerned takes action for demolition of this alleged unauthorized construction on the public road, he has to give a notice and opportunity of hearing to the petitioner.

#. The learned counsel for the respondents very vehemently contended that even if the land has been given by municipality, as it is a part of the public road, it will not confer any right on the petitioner.

#. I find sufficient merits in the contention of the learned counsel for the respondents that even the municipality has no power to give land to the petitioner on the public road, but this is matter is to be decided by the Collector of the District concerned, after notice to the petitioner.

#. In the result, this special civil application is disposed of in the terms that before any actin is taken for demolition of this shop, notice and opportunity of hearing be given to the petitioner by respondents. Rule stands disposed of accordingly with no order as to costs.

(S.K.Keshote, J.)

(sunil)